

concentrates and isolates from aqueous process streams for food processing.

**FOR FURTHER INFORMATION CONTACT:**

Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3077.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4659) has been filed by Life Technologies, Inc., 9800 Medical Center Dr., Rockville, MD 20850-3321. The petition proposes to amend the food additive regulations in § 173.25 *Ion-exchange resins* (21 CFR 173.25) to provide for the safe use of quaternary amine cellulose ion exchange resins in the isolation and purification of protein concentrates and isolates from aqueous process streams for food processing.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 19, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-10918 Filed 4-29-99; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 90F-0018]

#### Rohm and Haas Co.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0B4189) proposing that the food additive regulations be amended to provide for the expanded use of n-alkylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the *Federal Register* of February 9, 1990 (55 FR 4690), FDA announced that a food additive petition (FAP 0B4189) had been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 177.1060 *n-Alkylglutarimide/acrylic copolymers* (21 CFR 177.1060) to provide for the expanded use of n-alkylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food also under the conditions of use A, B, and C described in Table 2 of 21 CFR 176.170(c). Rohm and Haas Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 2, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-10794 Filed 4-29-99; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 98E-0488]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Gonal-F®

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Gonal-F® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Gonal-F® (follitropin alpha/beta). Gonal-F® is indicated for the induction of ovulation and pregnancy in the anovulatory infertile patient in whom the cause of infertility is functional and not due to primary ovarian failure; and for the development of multiple follicles in the ovulatory patient participating in an Assisted Reproductive Technology (ART) program. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Gonal-F® (U.S. Patent No. 5,156,957) from Genzyme Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 14, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Gonal-F® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office

requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Gonal-F® is 2,044 days. Of this time, 569 days occurred during the testing phase of the regulatory review period, while 1,475 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* February 26, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 26, 1992.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* September 16, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for Gonal-F® (NDA 20-378) was initially submitted on September 16, 1993.

3. *The date the application was approved:* September 29, 1997. FDA has verified the applicant's claim that NDA 20-378 was approved on September 29, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,605 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 27, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 20, 1999.

Thomas J. McGinnis,  
Deputy Associate Commissioner for Health  
Affairs.  
[FR Doc. 99-10846 Filed 4-29-99; 8:45 am]  
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 98E-0846]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; Apligraf™

AGENCY: Food and Drug Administration,  
HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Apligraf™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market

the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Apligraf™. Apligraf™ is indicated for use with standard therapeutic compression in the treatment of uninfected partial and/or full-thickness skin loss ulcers due to venous insufficiency of greater than 1 month duration and which have not adequately responded to conventional ulcer therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Apligraf™ (U.S. Patent No. 4,485,096) from Organogenesis, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 16, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Apligraf™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Apligraf™ is 4,013 days. Of this time, 3,051 days occurred during the testing phase of the regulatory review period, while 962 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* May 29, 1987. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on July 2, 1987. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on May 29, 1987, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* October 4, 1995. FDA has verified the applicant's claim that the